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Sunset Reviews
Public Document

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Reviews of the
Antidumping Duty Orders on Certain Preserved Mushrooms from Chile,
India, Indonesia, and the People's Republic of China; Final Results

Summary

We have analyzed the substantive responses of the interested party in the expedited sunset reviews of the antidumping duty orders covering certain preserved mushrooms ("Mushrooms") from Chile, India, Indonesia, and the People's Republic of China. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in these expedited sunset reviews for which we received substantive responses by the domestic interested party:

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of imports
2. Magnitude of the margin likely to prevail

Margins from investigation

History of the Orders

Chile

On October 22, 1998, the Department of Commerce (“the Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the *Federal Register* with respect to imports of Mushrooms from Chile. *Notice of Final Determination of Sales at Less than Fair Value: Certain Preserved Mushrooms for Chile*, 63 FR 56613 (October 22, 1998). Shortly after, the Department published the antidumping duty order. *See Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile*, 63 FR 66529 (December 2, 1998). In the final results of antidumping duty order, the Department found the weighted-average dumping margin of 148.51 percent for Nature’s Farm Products S.A. and Ravine Foods, and for all other producers, manufacturers, and exporters of Mushrooms from Chile not specifically listed above. Since the issuance of the order, the Department completed one administrative review. *See Notice of Final Results of Antidumping Administrative Review: Certain Preserved Mushrooms from Chile*, 67 FR 31769 (May 10, 2002). We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise from Chile.

India

On December 31, 1998, the Department of Commerce published its final affirmative determination of sales at LTFV in the *Federal Register* with respect to imports of Mushrooms from India. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India*, 63 FR 72246 (December 31, 1998). Shortly after, the

Department published an amended LTFV and antidumping duty order on February 19, 1999. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from India*, 64 FR 8311 (February 19, 1999). At the time of the order the Department found a weighted-average dumping margin of 6.28 percent for Agro Dutch Foods Ltd., 14.91 percent for Ponds (India) Ltd. (currently Hindustan Lever Limited), 243.87 percent for Alpine Biotech Ltd., 243.87 percent for Mandeep Mushrooms Ltd., and 11.30 percent for all other producers, manufacturers, and exporters of Mushrooms from India not specifically listed above. Since the issuance of the order, the Department completed three administrative reviews. *See Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 68 FR 41303 (July 11, 2003); *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 67 FR 46172 (July 12, 2002); *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 66 FR 42507 (August 13, 2001). The Department published a Final Results of Changed-Circumstances Review on February 11, 2003. *See Final Results of Changed-Circumstances Review*, 68 FR 6884 (February 11, 2003). For the purposes of this review, the Department found KICM (Madras) Limited to be the successor-in-interest to Hindustan Lever Limited. We note that, to date, the Department has not made any final duty absorption determinations in this case, although the Department has preliminarily found duty absorption in the on-going fourth administrative review. The order remains in effect for all manufacturers and exporters of the subject merchandise from India.

Indonesia

On December 31, 1998, the Department published its final affirmative determination of sales at LTFV in the *Federal Register* with respect to imports of Mushrooms from Indonesia. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268 (December 31, 1998). Shortly after, the Department published the antidumping duty order. In the final results of antidumping duty order, the Department found a weighted-average dumping margin of 7.94 percent for PT Dieng Djaya/PT Surya Jaya Abadi Perkasa, 22.84 percent for PT Zeta Agro Corporation, and 11.26 percent for all other producers, manufacturers, and exporters of mushrooms from Indonesia not specifically listed above. *See Notice of Antidumping Duty Order: Certain Preserved Mushrooms From Indonesia*, 64 FR 8310 (February 19, 1999). The Department revoked the antidumping duty order with respect to PT Zeta Agro Corporation on July 2, 2003. *See Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part*; 68 FR 39521 (July 2, 2003). Since the issuance of the order, the Department completed four administrative reviews. *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part*, 68 FR 39521 (July 2, 2003); *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia*, 67 FR 32014 (May 13, 2002); *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia*, 66 FR 38061 (July 20, 2001). We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject

merchandise from Indonesia.

The People's Republic of China

On December 31, 1998, the Department determined that certain preserved mushrooms from the People's Republic of China ("China) were being sold in the United States at LTFV. The Department published its amended final affirmative determination of sales at LTFV, and the antidumping duty order on February 19, 1999. See *Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). The Department published its antidumping duty order on February 19, 1999. See *Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). In the final results of antidumping duty order, the Department found weighted-average dumping margins of 121.47 percent for China Processed Food I & E Co./Xiamen Jiahua I&E Trading Company, Ltd., 162.47 percent for Tak Fat Trading Co., 151.15 percent for Shenzhen Cofry Cereals, Oils & Foodstuffs Co., Ltd., 142.11 percent for Gerber (Yunnan) Food Co., Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corporation, Fujian Provincial Cereals, Oils & Foodstuffs I & E Corp., Putian Cannery Fujian Province, Xiamen Gulong I & E Co., Ltd., General Canned Foods Factory of Zhangzhou, Zhejiang Cereals, Oils & Foodstuffs I & E Corp., Shanghai Foodstuffs I & E Corp. and Canned Goods Co. of Raoping, and 198.63 percent for the China-wide rate. Since the issuance of the order, the Department completed three administrative reviews. See *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the*

Third Antidumping Duty

Administrative Review, 68 FR 41304 (July 11, 2003); *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 46173 (July 12, 2002); *Amended Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 35595 (July 6, 2001); *Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183 (August 17, 2000). We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise from China.

Background: *Chile, India, Indonesia, and the People's Republic of China*

On November 3, 2003, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on Mushrooms from Chile, India, Indonesia, and the People's Republic of China. *See Notice of Initiation*, 68 FR 62280 (November 3, 2003). The Department received Notices of Intent to Participate on behalf of a domestic interested party, the Coalition for Fair Preserved Mushroom Trade (collectively the "Coalition")¹, within the deadline specified in section 351.218(d)(1)(i) of the *Department's Regulations (Sunset Regulations)*. The domestic interested

¹The Coalition includes LK Bowman, Inc., Monterey Mushrooms Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

party claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the “Act”), as a U.S. producer of mushrooms.

We received complete substantive response from the domestic interested party on December 3, 2003, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In its substantive responses, the Coalition states that it has been involved in these proceedings since their inception and remains committed to full participation.

We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day review of these orders.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“the Commission”) the magnitude of the margin of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested party.

Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The Coalition asserts that revocation of the antidumping duty orders of Mushrooms from Chile, India, Indonesia and the People's Republic of China would likely lead to continuation or recurrence of dumping by the foreign producers/exporters as well as material injury to the U.S. industry. *See Substantive Response of the Domestic Interested Party*, December 3, 2003 at p. 27.

Chile

With respect to weighted-average dumping margins, the Coalition notes that in the investigation the Department established a 148.51 percent dumping for Nature's Farm Products, Ravine Foods, and for all others.

With respect to volume of imports, the domestic interested party asserts that the imposition of the order has significantly reduced the imports of mushrooms from covered countries including Chile.

Id. The Coalition points to the record history to demonstrate that the discipline of the order has forced subject producers either to increase their export prices to lower dumping levels or to significantly reduce their volume of sales to the United States. Id.

India

With respect to weighted-average dumping margins, the Coalition notes that in the investigation, the Department established a 6.28 percent dumping margin for Agro Dutch Food Ltd., 243.87 percent for Alpine Biotech Ltd. and Mandeep Mushrooms, 14.91 percent for Ponds India, Ltd., and 11.30 percent for all others.

With respect to volume of imports, the domestic interested party asserts that the imposition of

the order has significantly reduced the imports of mushrooms from covered countries including India.

Id. The Coalition points to the record history to demonstrate that the discipline of the order has forced subject producers either to increase their export prices to lower dumping levels or to significantly reduce their volume of sales to the United States. Id.

Indonesia

With respect to weighted-average dumping margins, the Coalition notes that in the investigation the Department established a 7.94 percent dumping margin for PT Dieng Djaya/PT Surya Jaya Abadi Perkasa, 22.84 percent for PT Zeta Agro Corporation, and 11.26 percent for all others.

With respect to volume of imports, the domestic interested party asserts that the imposition of the order has significantly reduced the imports of mushrooms from covered countries including Indonesia. Id. The Coalition points to the record history to demonstrate that the discipline of the order has forced subject producers either to increase their export prices to lower dumping levels or to significantly reduce their volume of sales to the United States. Id.

The People's Republic of China

With respect to weighted-average dumping margins, the Coalition notes that in the order the Department established a 121.47 percent dumping margin for China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd., 162.47 percent for Tak Fat Trading Co., 151.15 percent for Shenzhen Cofry Cereals, Oils & Foodstuffs Co., Ltd., 142.11 percent for the following companies: Gerber (Yunnan) Food Co., Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corp., Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp., Putian Cannery Fujian Province, Xiamen Gulong I&E Co., Ltd., General Canned Foods Factory of Zhangzhou, Shanghai Foodstuff I&E Corp., Canned

Goods Co. of Roaping, and 198.63 percent for China-wide rate.

With respect to volume of imports, the domestic interested party asserts that the imposition of the order has significantly reduced the imports of mushrooms from covered countries including the People's Republic of China. Id. The Coalition points to the record history to demonstrate that the discipline of the order has forced subject producers either to increase their export prices to lower dumping levels or to significantly reduce their volume of sales to the United States. Id.

In sum, the Coalition argues that dumping is likely to continue and supported this by stating that dumping margins above *de minimis* have continued since the imposition of the orders. The Coalition also notes that import volumes from Chile, India, Indonesia, and the People's Republic of China have declined since the issuance of these orders. Id.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin at section II.A.2.* In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the

issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin at section II.A.3.*

Section 751(c)(4)(B) of the Act provides that, in addition to considering the guidance on likelihood cited above, the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party refrains from participating in the sunset review. In this sunset review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Department's Regulations*, this constitutes a waiver of participation.

As indicated above, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where dumping continued at any level above *de minimis* after the issuance of the order. In this proceeding, the Department finds that dumping margins continued at levels above *de minimis* after the issuance of the order. Based on this fact, and the absence of respondent responses, the Department finds that the existence of dumping margins above *de minimis* levels are highly probative of the likelihood of continuation or recurrence of dumping. For these reasons, the Department determines that dumping is likely to continue or recur if the orders on Mushrooms from Chile, India, Indonesia, and the People's Republic of China were revoked.

Magnitude of the Margin Likely to Prevail:

Interested Party Comments

In their substantive response, the domestic interested party cited the *Sunset Policy Bulletin* to argue that the Department normally uses dumping margins established in the original investigation as the

dumping margin likely to prevail if the order were to be revoked. However, for several respondents involved in the various segments of these proceedings, the Department has calculated rates that are higher than those calculated in the original investigation. Thus, the domestic interested party contended that given the persistent dumping observed throughout the multiple reviews, the Department should report the highest margin calculated in any segment of these proceedings for any given respondent that remains under order as the rate most indicative of the dumping margin that is likely to prevail. *See Substantive Response of the Domestic Interested Party at p. 35.*

Department's Position

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "All Others" rate from the investigation. *See Sunset Policy Bulletin at section II.B.1.* Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. *See Sunset Policy Bulletin at sections II.B.2 and 3.*

Although the Department normally reports the rates from the original investigation, the domestic interested party has requested that the Department use the highest margin calculated in any segment for the various respondents. In the most recent administrative review of Certain Preserved Mushrooms from the People's Republic of China, the Department applied an adverse facts available rate for Gerber (Yunnan) Food Co., of 198.63 percent which differs from the rate calculated for Gerber in the underlying investigation.

The *Sunset Policy Bulletin* specifically provides that the Department may report to the Commission “a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order, even if the increase was a result of the application of best information available or facts available.” *See Sunset Policy Bulletin at section II.B.2.* The Department finds that Gerber’s recently applied rate of 198.63 percent, more likely reflects Gerber’s dumping margin for the future. Accordingly, the Department will report to the Commission this higher rate for Gerber. *See Certain Preserved Mushrooms From the People’s Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003). For all of the other respondents, the Department will report the rates calculated in the underlying investigation.

We note that the antidumping duty orders on Mushrooms from Chile, India, Indonesia, and the People’s Republic of China remain in effect for all manufacturers, producers, and exporters of the subject merchandise, except for PT Zeta Agro Corporation from Indonesia. *See Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part*, 68 FR 39521 (July 2, 2003).

Final Results of Reviews

We determine that revocation of the antidumping duty orders on Mushrooms from Chile, India, Indonesia, and the People’s Republic of China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Chile	
Manufacturers/Exporters/Producers	Weighted Average Margin (percent)

Nature's Farm Products S.A.	148.51
Ravine Foods	148.51
All Others	148.51

India	
Manufacturers/Exporters/Producers	Weighted Average Margin (percent)

Agro Dutch Foods Ltd.	6.28
Ponds (India) Ltd.	14.91
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All Others	11.30

Indonesia	
Manufacturers/Exporters/Producers	Weighted Average Margin (percent)

PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corporation*	<i>revoked</i>
All Others	11.26

*Effective February 1, 2002, the antidumping duty order with respect to PT Zeta Agro Corporation was revoked. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation Opportunity To Request Administrative Review*, 67 FR 4549 (February 1, 2002).

The People's Republic of China	
Manufacturers/Exporters/Producers	Weighted Average Margin (percent)

China Processed Food I & E Co./ Xiamen Jiahua I & E Trading Company, Ltd.	121.47
Tak Fat Trading Co.	162.47

Shenzhen Cofry Cereals, Oils & Foodstuffs Co., Ltd.	151.15
Gerber (Yunnan) Food Co.	198.63
Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corporation	142.11
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp.	142.11
Putian Cannery Fujian Province	142.11
Xiamen Gulong I & E Co., Ltd.	142.11
General Canned Foods Factory of Zhangzhou	142.11
Zhejiang Cereals, Oils & Foodstuffs I& E Corp.	142.11
Shanghai Foodstuffs I & E Corp.	142.11
Canned Goods Co. of Raoping	142.11
PRC- wide rate	198.63

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)